

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-08-0148 MHP

NEW CONTENDERS, INC., et al.,

Plaintiff(s),

ORDER

vs.

KI RYE CHONG, dba SKYSCRAPER CLUB,

Defendant(s).

Plaintiffs obtained a default judgment against the above-named defendant in a copyright infringement action in this court in Case No. 96-3423 MHP. Judgment was entered on December 1, 1997. Plaintiffs did not file for a renewal of judgment as to this defendant, but rather filed this new action on the judgment. The action was filed on January 9, 2008, more than ten years after the entry of judgment against defendant Chong.

Plaintiffs argue that the ten year statute of limitations provided for by California Code of Civil Procedure section 337.5(3), had not expired at the time of the filing of the new action because the judgment was not final, reasoning that the judgment was not final because the time within which to appeal had not expired. So far, so good. They then rely on rule 2(a)(3) of the California Rules of Court that provides that where no notice of entry of judgment is filed the time to appeal does not run until 180 days after entry of judgment.


The problem with this reasoning is that this action was brought in federal court; indeed, it is a federal question case that arises under federal copyright laws. California Rules of Court with

1 respect to appeal do not apply and plaintiffs cannot obtain the benefit of the provisions of the
2 California Rules of Court. They must comply with the federal rules which specifically provide that
3 an appeal must be filed within thirty (30) days “after the judgment or order appealed from is
4 entered”.

5 Fed.R.App.P.4(a). There is no exception provided for where no *notice* of entry of judgment is filed.
6 The federal rules do not so require and the state court rules do not apply. Thus, in this case, the ten
7 year statute of limitations expired thirty days after the December 1, 1997 entry of judgment, i.e.,
8 December 31, 1997.

9 Accordingly and for the foregoing reasons, this action is DISMISSED with prejudice.

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11 Date: January 27, 2008


MARILYN HALL PATEL
Judge
United States District Court
Northern District of California

ENDNOTES

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